



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2003

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-7683

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 190027.

The Travis County Sheriff's Office (the "Sheriff's Office") received a request for all incident reports pertaining to a named individual at a specified address. You inform us that the Sheriff's Office has released some responsive information to the requestor. You assert the submitted information is excepted from disclosure under section 552.108 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we note the submitted information includes documents produced in response to grand jury subpoenas. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, because a portion of the submitted information, which we have marked, appears to have been obtained pursuant to a grand jury subpoena or at the direction of the grand jury, this information is in the custody

of the Sheriff's Office as an agent of the grand jury and is not subject to disclosure under chapter 552. *See id.* at 4.

Next, we note your acknowledgment of your noncompliance with section 552.301 of the Government Code. *See* Gov't Code § 552.301(d) (requiring governmental body to provide requestor with copy of written communication to the attorney general requesting an attorney general decision within ten business days after receipt of request for information). According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A governmental body must release information presumed public under section 552.302, unless it demonstrates a compelling reason to withhold the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because you claim section 552.108 on behalf of another governmental body, which can provide a compelling reason for nondisclosure, we will consider your arguments under this exception. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under Gov't Code § 552.108). Also, we will address the applicability of section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Further, where an individual's criminal history information has been compiled by a governmental entity, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). In this instance, because the requestor seeks all incident reports pertaining to a named individual at a specified address, we find that the request requires the Sheriff's Office to compile information regarding this individual. Based on the reasoning set out in *Reporters Committee*, such a compilation implicates the individual's right to privacy to the extent that it consists of records in which

the named individual is portrayed as a suspect, arrestee, or defendant. However, we note section 552.023 states that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023. In this case, the requestor represents the individual at issue. Accordingly, to the extent that the Sheriff's Office maintains responsive information that reveals that the requestor's client is a suspect, arrestee, or defendant, the Sheriff's Office must release such information to the requestor, unless some other exception is applicable to any such information.

Next, you claim subsection 552.108(a)(1), which states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). Section 552.108 may be invoked by any proper custodian of information which relates to an investigation or prosecution. *See, e.g.*, Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under Gov't Code § 552.108). You inform us that the submitted information has been forwarded to the Travis County District Attorney's Office [the "District Attorney"] for further investigation and possible prosecution, and that the District Attorney has informed you "that it objects to the release of the requested information because it pertains to active criminal investigations and release of the information would interfere with [the District Attorney's] investigation and prosecution of crime." Based on our review of your representations and the information at issue, we believe you have established that release of the information "would interfere with the detection, investigation, or prosecution of crime." *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the Sheriff's Office may withhold the submitted information with the following exceptions.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Therefore, the Sheriff's Office must release basic information.

In addition, we note that the submitted information includes an arrest warrant and supporting affidavit. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Code Crim. Proc. art. 15.26) (emphasis added). Thus, article 15.26 makes the submitted warrant and supporting affidavit expressly public. Although you assert the submitted information is excepted from disclosure under section 552.108, exceptions found in the Act do not apply to information made public by other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). Therefore, the Sheriff's Office must release the information we have marked, in its entirety, in accordance with article 15.26 of the Code of Criminal Procedure.

Last, we note that the submitted information includes a document that indicates it is on file with a federal court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, as prescribed by section 552.022 of the Government Code, the Sheriff's Office must release the public court record to the requestor, unless it is confidential under other law. Section 552.108, a discretionary exception under the Act, does not constitute "other law" that makes information subject to section 552.022(a)(17) confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive Gov't Code § 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the Sheriff's Office may not withhold the document on file with a court, which we have marked, under section 552.108 of the Government Code.

In summary, some of the submitted information, which we have marked, is not subject to the Act because it appears to have been obtained pursuant to a grand jury subpoena or at the direction of the grand jury, and thus, is in the custody of the Sheriff's Office as an agent of the grand jury. The Sheriff's Office must release the submitted arrest warrant and supporting affidavit, which we have marked, in accordance with article 15.26 of the Code of Criminal Procedure. The Sheriff's Office must release the court document we have marked under section 552.022 of the Government Code. With the exception of basic information, the Sheriff's Office may withhold the remaining submitted information under subsection 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Christen Sorrell". The signature is fluid and cursive, with the first name "Christen" written in a larger, more prominent script than the last name "Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 190027

Enc: Submitted documents

c: Mr. Kevin Boyd
Attorney at Law
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(w/o enclosures)